S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **CAROL BROOKS** against **DTE ENERGY COMPANY** and **DTE ELECTRIC COMPANY**.	))))	Case No. U-18012

At the January 23, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On January 4, 2016, Carol Brooks (Complainant) filed a complaint and an amended complaint against DTE Energy Company (DTE Energy) alleging that DTE Energy violated MCL 460.9q and MCL 460.10t when it improperly disconnected her electric service. On March 24, 2016, DTE Electric Company (DTE Electric), claiming to be the proper respondent, filed an answer to the amended complaint.

A prehearing conference was held on April 7, 2016, before Administrative Law Judge Sharon L. Feldman (ALJ). Complainant, DTE Electric, and the Commission Staff participated in the proceeding.

Subsequently, Complainant filed a second amended complaint on August 25, 2016, predominantly adding allegations pertaining to applicable rule violations, as a result of the alleged

improper disconnection of electric service to her residence. On September 15, 2016, DTE Electric filed its answer to the second amended complaint.

The ALJ conducted an evidentiary hearing on January 18 and February 7, 2017. On June 15, 2017, the ALJ issued her Proposal for Decision (PFD) in the matter. On October 25, 2017, the Commission issued an order in this case (October 25 order) finding that, because Complainant was a customer of DTE Electric when it disconnected her electric service and had not engaged in unauthorized use of electric service, DTE Electric had violated seven administrative rules within the Commission's Consumer Standards and Billing Practices For Electric and Gas Residential Service in place at the time.

On November 20, 2017, Complainant filed a motion for reconsideration or rehearing (petition).[1] In her petition, Complainant takes issue with the Commission's rejection of the ALJ's factual finding that she was a low-income customer at all relevant times, thus finding no violation of MCL 460.10t and Mich Admin Code, R 460.148 (Rule 48), and claims that this "has a terrible effect on [her], as it prevents [her] from recovering attorney fees incurred in her fight to restore her electric service and fails to ensure that this situation will not reoccur." Complainant's petition, p. 1. Complainant further argues that the seven administrative rule violations and resulting fines imposed by the Commission "amount to a mere slap on the wrist to DTE [Electric] for its blatant disregard for the MPSC's rules and regulations, as well as its callous indifference for the health and safety of its customer." *Id.*, p. 2. Complainant therefore, in claiming that the Commission committed factual and legal errors in the rendering of its October 25 order, asks that the Commission reconsider its decision and adopt the ALJ's PFD in its entirety or, in the alternative,

[1] For purposes of Mich Admin Code, R 792.10437(1) (Rule 437(1)), Complainant's motion for reconsideration or rehearing is deemed a petition.

allow a rehearing for her to submit "tangible" documentation to substantiate her low-income customer status when DTE Electric improperly disconnected her electric service on January 6, 2015. *Id.*

On December 11, 2017, DTE Electric filed its response (answer) to Complainant's petition.[2] In its answer, DTE Electric argues that Complainant's petition must be denied as a matter of law, because it does not meet the standards for rehearing under Rule 437. More specifically, DTE Electric claims that Complainant's alleged factual and legal errors lack merit, her petition merely repeats arguments previously raised, and she has not provided the Commission with newly-discovered evidence or alleged a change in facts or circumstances.

The Commission, as discussed in further detail below, agrees with DTE Electric and finds that Complainant's petition fails to satisfy the standards for rehearing and should, therefore, be denied.

Discussion

Rule 437 of the Commission's Rules of Practice and Procedure provides that a petition for rehearing may be based on claims of error, newly-discovered evidence, facts or circumstances arising after the close of the record, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly-discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

1. Alleged Factual Errors

[2] For purposes of Rule 437(2), DTE Electric's response is deemed an answer to Complainant's petition.

Complainant argues that the Commission "erroneously discredited [her] testimony . . . based on facts that are irrelevant to [her] testimony[,] [s]pecifically[] [that she] never claimed to have received any MDHHS [Michigan Department of Health and Human Services] payments after February 7, 2011." Complainant's petition, p. 3. Complainant further claims that "[t]he parties do not dispute the fact that [she] came to DTE's office on December 8, 2014 inquiring about assistance from agencies that help low income customers . . . ," thus asserting that "the undisputed record is that [she] was low income at all relevant times." *Id*., pp. 3, 5.

DTE Electric argues that Complainant's claim is invalid and is merely repeating arguments previously raised. In support of its argument, DTE Electric states that the Commission acknowledged Complainant's testimony but found that such testimony was not enough to demonstrate that she was a low-income customer and that her payment history also did not give DTE Electric any reason to believe that Complainant was a low-income customer at the time. DTE Electric further notes that it provided testimony that she was not a low-income customer of record at the time her electric service was disconnected on January 6, 2015, alongside testimony as to how customers can notify the company that they are, in fact, low-income. DTE Electric's answer, p. 5, referencing 4 Tr 235-236.

Although Complainant claims that the Commission erroneously discredited her testimony based on irrelevant facts related to her payment history as shown in Exhibit R-1, the Commission disagrees, because utility assistance from MDHHS, being a form of assistance for those that are low-income, is relevant, as one way, to see if someone is low-income. Additionally, the Commission never stated in its October 25 order that Complainant claimed that MDHHS made utility payments on her behalf after February 7, 2011, and the record was not undisputed on the issue of whether Complainant was a low-income customer when her electric service was shut off,

because DTE Electric did not agree. The Commission therefore agrees with DTE Electric and finds that, based on the record, it did not commit any factual errors in finding that Complainant was not a low-income customer as of January 6, 2015.

2. Alleged Legal Errors

Complainant argues that "[t]here is nothing in [MCL 460.10t(6)(b)] that requires the submission of tangible documents." *Id*., p. 4. In this same vein, Complainant also claims that "DTE [Electric] should be estopped from arguing that [she] failed to produce documentation regarding her low-income status due to its interference with her ability to present evidence regarding her low-income status" when she visited and was in contact with the company before it disconnected her electric service on January 6, 2015. *Id*., p. 7. If documentary evidence is what the Commission requires, however, Complainant states that she requests a rehearing to substantiate her status as a low-income customer with documentation. Specifically, Complainant requests the opportunity to submit documentation to show the fixed social security disability insurance payments she received in January of 2015; that she was approved for the Michigan Department of Human Services Food Assistance Program as of January 6, 2015; the Medicaid card she had on January 6, 2015, establishing that she was a Medicaid recipient at that time; and the Bridge card that she had on January 6, 2015, establishing that she also received government assistance to purchase food at that time as well. Complainant further states that, if her rehearing request is denied, she will alternatively seek to have this documentary evidence submitted to the Commission pursuant to MCL 462.26(6).

DTE Electric responds that Complainant's argument lacks merit. More specifically, DTE Electric contends that "[w]hile the word 'tangible' does not appear in the definition of 'low-income customer' under MCL 460.10t(6)(b) or [Mich Admin Code, R 460.102(n) (Rule 2(n)], it is

reasonable to interpret the rule as requiring some sort of confirmatory proof that the customer satisfies the statutory definition," a procedural process which DTE Electric currently follows. DTE Electric's answer, pp. 6-7. DTE Electric further asserts that relying on verbal statements alone to establish low-income customer status is "nonsensical." *Id.*, p. 6. In response to Complainant's estoppel argument, DTE Electric contends that because "she failed to raise it during the pendency of this case[,] [Complainant] should not be granted the opportunity to do so now under the guise of a reconsideration request." *Id.*, p. 7. DTE Electric further asserts that the reason why Complainant did not provide documentation of her low-income status, raised in her estoppel argument, is not in evidence and should not therefore be considered. DTE Electric however claims that, even if such rationale was in evidence, "Complainant continues to miss the mark." *Id.*, p. 8. Specifically, DTE Electric states:

> Providing documents to DTE Electric **after** service was disconnected does not somehow retroactively make the notice requirements of MCL 460.10t applicable. For the statutory requirements to apply, the Company must be made aware that the individual whose service is being shutoff is "low-income" **prior to** disconnection, i.e., when the Company would have been required to fulfill the notice requirements. Ms. Brooks' had not provided information to the Company regarding her alleged low-income status prior to December 6, 2014 or January 6, 2015.

Id., p. 8. DTE Electric additionally argues that the exhibits that Complainant proposes to now admit into evidence were presumably available through the pendency of this case and do not appear to be newly-discovered evidence, since not described as such in her petition. But, even if these proposed exhibits were to prove that Complainant was a low-income customer as of January 6, 2015, DTE Electric argues that "they do not appear to show that this information was ever conveyed to DTE Electric prior to the shutoff," a point it claims it has argued throughout this case and as being the basis for the Commission's findings on this issue. *Id.*, p. 9.

The Commission stands by its interpretation that more than just a verbal statement from a customer is required to meet the definition of "eligible low-income customer" under MCL 460.10t(6)(b) and Rule 2(n), an interpretation which is also in line with current utility practice, as testified to by DTE Electric. See 4 Tr 235-236. The Commission further finds that Complainant's equitable estoppel argument at this juncture, not having been previously raised, is not appropriate for consideration or further discussion. The Commission also finds that the supplementary evidence referenced in Complainant's petition and filed under seal should not be taken into consideration, because Complainant does not assert that it is newly-discovered evidence,[3] and such supplementary evidence was not provided to DTE Electric prior to shutoff.

Lastly, while the Commission understands the frustration presented by Complainant in her petition, the Commission is a creature of statute. See *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988). Therefore, and as discussed in its October 25 order, the Commission was bound by the available sanctions under MCL 460.55 for the seven administrative rule violations presented in this case.[4] Further, although Complainant argues the Commission's decision in this case fails to ensure that this situation will not occur again, the statutes and rules that are in place are intended to address situations like the one presented here, for which statutory

[3] The Commission notes that newly-discovered evidence is also the standard for requests under MCL 462.26(6). See, e.g., the May 18, 1990 order in Case No. U-8545-R.

[4] As it applies to this case, the elements in MCL 460.10t(1), which are substantially mirrored in Rule 48(1), are that there is: (1) an eligible customer, who (2) has a delinquent account, (3) requests shutoff protection, (4) pays to the utility a specified monthly amount, and (5) demonstrates, within 14 days of requesting shutoff protection, that he or she has applied for state or federal heating assistance. With that, even if Complainant had proven that she was a low-income customer at the time her electric service was shut off, the Commission is not certain that DTE Electric would have been found to have violated MCL 460.10t and Rule 48 because Complainant, having not been enrolled in the winter protection plan, failed to show that she met all of the terms and conditions necessary for the winter protection plan to protect her electric service from being disconnected on January 6, 2015.

sanctions are available when violations occur. And, the Commission also investigates matters, on its own motion, when appropriate. See, e.g., the December 20, 2017 order in Case No. U-18486.

THEREFORE, IT IS ORDERED that Carol Brooks's petition for reconsideration or rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of January 23, 2018.

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Kavita Kale, Executive Secretary